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IN THE

Supreme Court of the United States

October Term, 1931.

No. 433

WILLIAM E. LAMB, *Petitioner,*

vs.

WILLIAM A. SCHMITT, RECEIVER, *Respondent.*

PETITION FOR WRIT OF CERTIORARI

AND

BRIEF IN SUPPORT THEREOF.

(The jurisdiction included.)

EMILE GODCHAUX,
W. CALVIN WELLS,
ARVID B. TANNER,
Counsel for Petitioner.

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(The jurisdiction included.)

May It Please the Court:

The petition of William E. Lamb respectfully shows to this Honorable Court:

A.

SUMMARY STATEMENT OF THE MATTER INVOLVED.

The question involved is whether a circuit court of appeals erred in determining petitioner's right to

immunity from service of a summons in equity while attending court in a foreign jurisdiction solely upon a consideration of the nature and merits of the cause of action pleaded against him, and in reversing the district court and depriving petitioner of immunity because of its opinion with respect thereto.

Petitioner is an attorney residing at Evanston, Illinois (R. 109). He was served with summons in Clarksdale, Mississippi, on the evening of April 30, 1930. (R. 109.) The summons was issued out of the District Court for the Northern District of Mississippi. (R. 109.) At the time of service, petitioner was enroute to his home at Evanston, Illinois, after having on that day attended a session of the District Court for the Northern District of Mississippi at Yazoo City, Mississippi. (R. 109-113.)

On May 16, 1930, petitioner, not having previously appeared in any way, appeared specially in the district court for the sole purpose of moving to quash *service* of the summons on the ground that he was privileged and immune from the service thereof as a non-resident attending a session of court in that jurisdiction. (R. 96-99.) The motion was supported by an affidavit setting forth that the sole occasion for his presence in the district at the time the process was served was to be present, on the day the summons was served, at a hearing in the District Court for the Northern District of Mississippi as an *attorney of record* for one of the defendants in the case of *S. B. Cramer v. Florence T. Holland, et al.*, No. 129 in equity, there pending, and also as a respondent in a contempt proceeding brought against him in that case, and that, except for these reasons, he would not have been within the jurisdiction of the

District Court for the Northern District of Mississippi at the time the summons was served. (R. 108-113.)

B.

REASONS RELIED UPON FOR THE ALLOWANCE OF THE WRIT.

1. The question involved concerns the jurisdiction of the District Court for the Northern District of Mississippi over petitioner in this case. The decision of the court of appeals on that question is in conflict with the decisions of this Court.

Page Co. v. MacDonald, 261 U. S. 446.
Stewart v. Ramsay, 242 U. S. 128

It is likewise in conflict with a decision of the Circuit of Appeals for the Seventh Circuit.

Durst v. Tautges, Wilder & McDonald, 44 Fed. (2d) 507.

2. Unless this court issues its writ of certiorari at this time, petitioner will be deprived of his immunity and will be required to stand trial in the District Court for the Northern District of Mississippi, notwithstanding he is entitled to immunity and cannot be required, under the decisions of this Court, to stand trial in that district.

3. The circuit court of appeals erred in determining the issue of petitioner's immunity from civil process solely upon a consideration of the nature and merits of the cause of action pleaded against him, and in not determining that issue solely upon a consideration of the reason for his presence in the district at the time the process was served.

4. The circuit court of appeals erred in reversing the judgment of the district court.

WHEREFORE, this petitioner respectfully prays that a writ of certiorari be issued out of and under the seal of this Honorable Court directed to the Circuit Court of Appeals for the Fifth Circuit, commanding that court to certify to and send to this Court for its review and determination, on a day certain to be therein named, a full and complete transcript of the record and of the proceedings in the case numbered and entitled on its docket 6072, *Wm. A. Schmitt, Receiver, Plaintiff, Appellant, v. Wm. E. Lamb, Defendant, Appellee,* and that the said judgment of the Circuit Court of Appeals for the Fifth Circuit may be reviewed by this Honorable Court and that this petitioner may have such other and further relief in the premises as to this Honorable Court may seem meet and just; and your petitioner will ever pray.

WILLIAM E. LAMB,
Petitioner,

By

EMILE GODCHAUX,
W. CALVIN WELLS,
ARVID B. TANNER,
Counsel for Petitioner.

BRIEF IN SUPPORT OF PETITION FOR CERTIORARI.

I.

THE OPINIONS OF THE COURTS BELOW.

The opinion of the Circuit Court of Appeals for the Fifth Circuit was rendered April 9, 1931, and is reported in 48 Fed. (2d) 533. (R. 169) The opinion of the District Court is reported in 43 Fed. (2d) 770. (R. 156)

II.

JURISDICTION.

1. The statutory provision believed to sustain jurisdiction is section 347, Title 28, of the United States Code.

2. The judgment sought to be reviewed became final upon the denial of the petition for rehearing on July 6, 1931. (R. 181.) The judgment was first entered on April 9, 1931. (R. 176.) The time for filing a petition for rehearing was extended to June 1, 1931, by an order of the Court of Appeals entered April 24, 1931 (R. 176-177), and the petition for rehearing was filed on June 1, 1931. (R. 178.)

3. The suit, in which the judgment sought to be reviewed was rendered, was brought in the District Court for the Northern District of Mississippi to recover attorneys' fees paid to petitioner while he was acting as one of the attorneys for one of the defendants in the case of *S. B. Cramer v. Florence T. Holland, et al.*, No. 129 in equity, also in that court. (R. 1-5.) The district court quashed service of the summons in this case on the ground that petitioner,

being a non-resident attorney in attendance upon the district court at the time of service, was immune from service of the summons. (R. 155-6.) Plaintiff appealed to the Circuit Court of Appeals for the Fifth Circuit (R. 156), which court, after reviewing the allegations made in the bill in that case, reversed the district court solely upon a consideration of the nature and merits of the cause of action pleaded and remanded the case. (R. 169-175.)

4. A case believed to sustain jurisdiction of this Court is:

Morris & Co. v. Ins. Co., 279 U. S. 405.

III.

STATEMENT OF THE CASE.

A statement of the case has been given under heading "A" in the petition and in the interest of brevity is not repeated.

IV.

SPECIFICATION OF ERRORS.

The errors intended to be urged are specified under heading "B"; paragraphs Nos. 3 and 4 in the petition, and in the interest of brevity are not repeated.

V.

ARGUMENT.

The Court of Appeals Erred in Reversing the District Court and in Holding that Petitioner Could Be Deprived of Immunity Because of the Nature of the Case Pleaded Against Him.

The object of the rule of immunity from process while attending court in a foreign jurisdiction is to

remove all incentive for non-residents to avoid appearing in that court. In *Page Co. v. MacDonald*, 261 U. S. 446, this court held that the rule of immunity is "inflexible" because the necessities of judicial administration require that it be inflexible. It also held that in determining whether immunity should be granted the nature or merits of the cause of action pleaded against the person claiming immunity is immaterial. In that case one of the grounds on which it was sought to make an exception to the rule was that the cause of action was based upon the conduct of the party seeking immunity while actually present in the jurisdiction where immunity was sought; but this Court held that that question was not material in determining whether immunity should be granted to a person whose presence in a foreign jurisdiction was solely for the purpose of attending a judicial proceeding in which that person was involved.

In *Stewart v. Ramsay*, 242 U. S. 128, this court held that the rule of immunity casts a *"perfect"* protection around every man who necessarily approaches a federal court in a jurisdiction foreign to him, and that this protection includes all parties whose appearances are necessary to aid in the presentation and determination of the case.

Under these decisions it has been held that the rule of immunity applies to non-resident attorneys appearing before courts in foreign jurisdictions as well as to parties and witnesses. *Durst v. Tautges, Wilder & McDonald*, 44 Fed. (2d) 507; *Read v. Neff*, 207 Fed. 890.

The decision of the circuit court of appeals in this case is inconsistent with these decisions. If immunity

is to be determined upon a consideration of the nature or merits of the cause of action stated, the only purpose of the rule will be defeated since its application will depend in each case, not upon the status occupied by the person seeking immunity, but upon the court's opinion of the very issue upon which it is sought to avoid a trial in a foreign jurisdiction.

Conclusion.

The jurisdiction of the District Court for the Northern District of Mississippi to render any valid judgment in this case depends upon its jurisdiction over this petitioner.

Under the decisions of this Court, it has no jurisdiction, and it is respectfully submitted that neither the district court nor the parties should be required to engage in the trial of a case in which the district court has no jurisdiction to render a valid judgment. It is therefore respectfully submitted that this case is one calling for the exercise by this Court of its supervisory powers at this time in order that the District Court for the Northern District of Mississippi may not be compelled to assume jurisdiction in a case where it cannot render a valid judgment, and that to such end a writ of certiorari should be granted and this court should review and reverse the decision of the Circuit Court of Appeals for the Fifth Circuit.

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